

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION**

AGENDA # III.A.2.

AGENDA ITEM SUMMARY: The Board has proposed amending the nondegradation rules regarding the existing criteria for nonsignificance determinations in ARM 17.30.716.

LIST OF AFFECTED RULES: ARM 17.30.716.

AFFECTED PARTIES SUMMARY: This rule could affect persons who propose to subdivide land if that subdivision includes subsurface wastewater treatment systems (i.e. septic systems) that serve one or two single-family homes or a non-industrial commercial system that is designed to discharge 700 gallons per day or less.

SCOPE OF PROPOSED PROCEEDING: The Board is considering final action on adoption of amendments to the above-referenced rule as proposed in the Montana Administrative Register.

BACKGROUND: In 1998 the Board of Environmental Review approved new criteria for determining nonsignificance for domestic subsurface wastewater treatment systems (SWTS) in the nondegradation rules (ARM 17.30.716). That rule revision was an attempt to simplify the nonsignificance determination procedure for SWTSs in situations where there was little or no probability that a SWTS would degrade high quality state waters. After these rules were implemented it became clear that the new criteria were too stringent. Compared to the total number of SWTS that were determined nonsignificant since that rule was adopted, the number of SWTS that met the criteria in ARM 17.30.716 was very small.

In 2000, the Department made a commitment to the Montana Consensus Council to examine the current method used to determine nonsignificance for domestic SWTSs, and to simplify the process while still complying with the requirements in 75-5-303(5), MCA, to prevent degradation. The Department's internal nondegradation core team was tasked with addressing this issue. The core team decided that the best method to meet the commitment made to the Consensus Council was to revise the existing criteria in ARM 17.30.716. After the core team prepared the initial rule, the Subdivision Task Force made additional revisions to prepare the current version of the rule.

The proposed rule amendments address the issue by modifying some of the criteria in the current rule, and by including some completely new criteria. New criteria include using county-specific subdivision growth history, and using advanced treatment to reduce the information requirements needed to demonstrate nonsignificant degradation. In most cases, the proposed criteria apply to small and large subdivisions, the existing criteria only apply to subdivisions with five or less lots.

HEARING INFORMATION: Thomas Bowe conducted a public hearing on July 31, 2003, on the proposed amendments. The Presiding Officer's Report and the draft Notice of Amendment, with public comments and proposed responses, are attached to this executive summary.

BOARD OPTIONS: The Board may:

1. Adopt the proposed amendments as set forth in the attached Notice of Public Hearing on Proposed Amendment;
2. Adopt the proposed amendments with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or
3. Decide not to adopt the amendments.

DEQ RECOMMENDATION: The Department recommends that the Board adopt the amendments as proposed.

ENCLOSURES:

1. Notice of Public Hearing on Proposed Amendment;
2. Presiding Officer's Report; and
3. Draft Notice of Amendment.